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APPLICATION NO.	FILING DAT	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
10/039,771	10/29/200	Shane E. Roark	89-00	9188
23713		2004	EXAMINER	
GREENLEE WINNER AND SULLIVAN P C 5370 MANHATTAN CIRCLE SUITE 201 BOULDER, CO 80303			MEDINA SANABRIA, MARIBEL	
			ART UNIT	PAPER NUMBER
BOULDER,	CO 80303		. 1754	
			DATE MAILED: 02/03/2004	1

Please find below and/or attached an Office communication concerning this application or proceeding.

1	Application No.	Amplicant(a)				
		Applicant(s)				
Office Action Summary	10/039,771	ROARK ET AL.				
Since Fiction Guillinary	Examiner	Art Unit				
The MAILING DATE of this communication	Maribel Medina	1754				
The MAILING DATE of this communication Period for Reply	appears on the cover sheet w	ith the correspondence address				
A SHORTENED STATUTORY PERIOD FOR RE THE MAILING DATE OF THIS COMMUNICATIO - Extensions of time may be available under the provisions of 37 CFF after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a - If NO period for reply is specified above, the maximum statutory per - Failure to reply within the set or extended period for reply will, by sta - Any reply received by the Office later than three months after the may earned patent term adjustment. See 37 CFR 1.704(b). Status	N. R.1.136(a). In no event, however, may a reply within the statutory minimum of this iod will apply and will expire SIX (6) MON	reply be timely filed ty (30) days will be considered timely. NTHS from the mailing date of this communication.				
1) Responsive to communication(s) filed on 29	9 October 2001.					
l • . 🗖	nis action is non-final.					
3) Since this application is in condition for allow closed in accordance with the practice under	wance except for formal mate	ters, prosecution as to the merits is				
Disposition of Claims	-					
4)⊠ Claim(s) <u>3-27</u> is/are pending in the application.						
4a) Of the above claim(s) 4,6,13,15,26 and 27 is/are withdrawn from consideration.						
5)⊠ Claim(s) <u>3,5 and 7-12</u> is/are allowed.						
6)⊠ Claim(s) <u>14-25</u> is/are rejected.						
7) Claim(s) is/are objected to.						
8) Claim(s) are subject to restriction and	d/or election requirement.					
Application Papers						
9)☐ The specification is objected to by the Exami	ner.					
10)⊠ The drawing(s) filed on is/are: a)⊠ a	ccepted or b) objected to	by the Examiner.				
Applicant may not request that any objection to the	ne drawing(s) be held in abeyan	ce. See 37 CFR 1.85(a).				
Replacement drawing sheet(s) including the corre	ection is required if the drawing(s) is objected to. See 37 CFR 1 121(d)				
11) The oath or declaration is objected to by the	Examiner. Note the attached	Office Action or form PTO-152.				
Priority under 35 U.S.C. §§ 119 and 120						
12)☐ Acknowledgment is made of a claim for forei a)☐ All b)☐ Some * c)☐ None of: 1.☐ Certified copies of the priority docume		i 119(a)-(d) or (f).				
2. Certified copies of the priority docume 3. Copies of the certified copies of the priority docume	nts have been received in Ai	oplication No				
application from the international Bure	au (PCT Rule 17 2/a))					
* See the attached detailed Office action for a list 13) Acknowledgment is made of a claim for domesting a specific reference was included.	st of the certified copies not r	eceived.				
37 CFR 1.78.	irst sentence of the specifica	tion or in an Application Data Sheet.				
a) The translation of the foreign language p	rovisional application has be	en received.				
14) Acknowledgment is made of a claim for domes reference was included in the first sentence of	suc priority under 35 U.S.C. § the specification or in an App	§ 120 and/or 121 since a specific lication Data Sheet. 37 CFR 1.78.				
Attachment(s)						
1) Notice of References Cited (PTO-892)	4) Interview Su	mmary (PTO-413) Paper No(s)				
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 	5) Notice of Inf	ormal Patent Application (PTO-152)				
, — William Disclosure Grateriletit(s) (F10-1449) Paper No(s)	<u>2/6/03</u> . 6) ∐ Other:					

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DETAILED ACTION

Election/Restrictions

1. Claims 4, 6, 13, 15, 26 and 27 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Election was made without traverse in the Paper filed on 11/13/2003.

Claim Rejections - 35 USC § 112

- 2. The following is a quotation of the first paragraph of 35 U.S.C. 112:
 - The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
- Claim 21 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 21 recites the following chemical formula $\mathbf{Mn_{0.5}Fe_{0.5}O_w}$ this chemical formula is not enabled by the general chemical formula of claim 14, the subscripts values for elements Mn (0.5) and Fe (0.5) add up to 1, however there is no support on claim 14 for a total subscript value equal to one, claim 14 only provides for "x + y + z is 0.1 to 0.9".

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 14-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 8, 10, 11, and 12 of U.S. Patent No. 6,458,741. Although the conflicting claims are not identical, they are not patentably distinct from each other because the general chemical formula of claim 1 of the patent encompasses the instantly claimed chemical formulas if the values of b, b' and b" are selected to be zero in the Patent chemical formula. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have substituted the various alternative values for x, a, a' and a" in order to obtain the instantly claimed chemical formula composition.

Allowable Subject Matter

6. The following is an examiner's statement of reasons for allowance: claims 3, 5, 7-11 and 12 are allowable upon consideration of the prior art. The prior art fail to disclose a method for selectively removing carbon monoxide from a gas containing hydrogen by contacting the gas with a catalyst composition with the instantly claimed formula the prior art fails to disclose a reactor comprising therein a catalyst with the instantly claimed formula.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Conclusion

Any inquiry concerning this communication or earlier communications from the 7. examiner should be directed to Maribel Medina whose telephone number is (571) 272-1355.

The examiner can normally be reached on Monday through Friday from 7:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman can be reached on (571) 272-1358. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-0994.

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